INDEX

AUTHORITIES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 152

Appeal from the District Court of the United States for the Eastern District of Louisiana.

NEW ORLEANS LAND COMPANY,
Appellant,

versus

LEADER REALTY COMPANY, LTD.,
Appellee.

Brief for the Leader Realty Company, Ltd.

SYLLABUS.

The judgment of the Supreme Court of Louisiana decreed the Leader Realty Company's title to the land in question, derived from a certain source, to be superior to

the title of the New Orleans Land Company, derived from an entirely different source.

Leader Realty Co. v. New Orleans Land Co., 142 La. 169.

The District Court of the United States has no jurisdiction to review the judgment of the Supreme Court of Louisiana rendered in the said suit of *Leader Realty Co. v. New Orleans Land Co., 142 La. 169*, or to enjoin the execution thereof.

United States Judicial Code, Par. 1030.

The purchaser of real estate under an order of United States Court only acquires such a title as the defendant in execution possesses, and that Court has no jurisdiction to enjoin the execution of the judgment of the Supreme Court of a State holding the title of a third person, derived from an entirely different source than that of defendant in execution, the better title.

Chicago v. Brewing Co., 108 U. S. 22.
High on Receivers, 4th Ed., Sec. 199, p. 322.

The judgment of the Supreme Court of Louisiana recognizes the validity of the orders and judgment of United States Court in the case of *Peake v. City of New Orleans*, and gave full effect thereto, but held that the title of the Leader Realty Co., derived from an entirely different source, to be the better title of the two. Therefore, the present bill of complaint is not an ancillary bill to enforce any orders or decrees in the *Peake case*, but is a bill to reverse the judgment of the Supreme

Court of the State of Louisiana; and the District Court of the United States is without jurisdiction.

The receiver in the case of *Peake v. City of New Orleans*, No. 12,008 of the United States Circuit Court for the Eastern District of Louisaina, sold such title as the City of New Orleans had, and that sale did not preclude one, not a party to that suit, from setting up against the purchaser a superior title derived from an entirely different source than that of the City of New Orleans.

Dupasseur v. Rouchereau, 21 Wal. 130.
Pittsburg v. Trust Co., 172 U. S. 510.

The gist of the bill of complaint is that the Supreme Court of the State of Louisiana erred in the construction of several statutes of the State of Louisiana, which the District Court of the United States is asked to correct. The Federal Courts will follow the decisions of the Supreme Court of a state relative to the laws on real estate and the construction placed on the State Constitution and statutes.

Burgess v. Seligman, 107 U. S. 20.
Archer v. Gravel Co., 233 U. S. 60.

The question as to which of two suitors, whose titles are derived from entirely different sources, has the better title to real estate situated in the State of Louisiana, necessarily depends upon the laws of the State of Louisiana and the decision of the highest Court of that State must be final and determinative of the matter.

Halstead v. Burton, 140 U. S. 273.
Burgess v. Seligman, 107 U. S. 20.

The judgment being final and determinative, the Federal Courts have no jurisdiction to review the judgment because a link in the chain of title of one of the parties to the litigation to which the other was no party, was a purchase under a decree of a Federal Court.

STATEMENT OF THE CASE.

On December 8, 1909, the Leader Realty Company, Ltd., the defendant in the present case, instituted suit in the Civil District Court for the Parish of Orleans against the Lakeview Land Company and the New Orleans Land Company to be decreed to be the owner of lots 1, 6 and 7 of Section 8 and lots 1, 6, 7 and 12 of Section 17, in Township 12 South, Range 11 East, in the Southeast District, east of the river, according to the plat of the survey of said lands in the State Land Office, comprising 321.42 acres. Said suits are numbered, respectively, 91,799 and 91,800 of the docket of the Civil District Court, Parish of Orleans (See petition, Tr., p. 51). By agreement, these two cases were consolidated.

On November 19, 1913, the New Orleans Land Company filed its answer in the case, alleging, among other things, the following:

> "That the defendant acquired from Dr. C. A. Gaudet, by an act before James Fahey, Notary Public, February 16th, 1893, and by a title translative of property, for a valuable consideration, and the title was duly registered in the Conveyance Office of this

parish, in Book 148, folio 89; that Dr. Gaudet acquired from the Receiver of the Drainage Taxes, on February 20th, 1893, by act before W. Morgan Gurley, Notary Public, duly registered in the Conveyance Office of this parish, Book 148 folio 93; which sale was made by virtue of proceedings had in the Circuit Court of the United States for the Eastern District of Louisiana, under No. 12,008 of said Court, in the matter of James W. Peake v. City of New Orleans, which sale was duly confirmed by said Court and subsequently affirmed by the Circuit Court of Appeals for the Fifth Circuit, under No. 46 of said Court, reported in 52 Federal Reporter, page 74.

"That said proceedings in equity before the Circuit Court of the United States effectually protected the interest of these respondents from any attack and especially where the lapse of ten years have rendered said proceedings conclusive and beyond power of attack, which prescription is now especially pleaded.

"That full faith and credit must be given to the judicial proceedings above mentioned by the Courts of this State, under the Constitution of the United States, and the same cannot in any wise be attacked in these proceedings.

"That J. Ward Gurley, the Receiver of the Drainage Taxes, duly appointed as such by the Circuit Court of the United States for the Eastern District of Louisiana, acquired said property from the City of New Orleans, by transfer and assignment, on

January 1st, 1892, before Joseph D. Taylor, Notary Public, under orders of said Court of the 13th of June, 1891, and the 5th and 13th of December, 1891, in suit No. 12,008 of said Circuit Court of the United States for the Eastern District of Louisiana.

"That the City of New Orleans acquired said property from the Commissioners of the First Drainage District by act of the Legislature, No. 30 of 1871, Section 9.

"That said act was passed for the purpose of carrying into effect the drainage of swamp lands donated over by the United States to the State of Louisiana under the swamp lands grants of Congress of 1849 and 1850.

"That the Commissioners of the First Drainage District acquired said property at Sheriff's sale for drainage taxes, on the 19th, 20th, 21st of July, 1863, and October 10th, 1863, March 12, 19, 1863, under proceedings No. 17,028 of the late Third District Court of New Orleans, transferred to the Civil District Court, under No. 92,640."

See Answer, Tr., p. 52.

On the issues thus joined, the case was tried in the Civil District Court for the Parish of Orleans on the 26th day of November, 1913, by Hon. Porter Parker, Judge. The entire record in the suit, styled *James W. Peake v. The City of New Orleans, No. 12,008, In Equity*, was introduced in evidence, and on May 14, 1914, judgment was rendered by the

Honorable Porter Parker, Judge, recognizing plaintiff as the owner of a portion of the land claimed. (See Judgment, Tr., p. 55.)

On June 29, 1914, defendants appealed from this judgment to the Honorable Supreme Court of the State of Louisiana, which affirmed the judgment of the lower Court at appellant's costs. (See *Leader Realty Co. v. Lakeview Land Co., 142 La. 170.)*

In the opinion, Mr. Justice O'Niell, as organ of the Court, said:

> "This is a petitory action, in which the plaintiff claimed title to lots 1, 6 and 7 of Section 8, and lots 1, 6, 7 and 12 of Section 17, in T. 12 S., R. 11 E., in the Southeastern District of Louisiana, east of the Mississippi River. * * *
>
> See Judgment, Tr., p. 57.
>
> "The plaintiff bought the land in contest, being a part of lot 7 of Section 8 and of lots 1, 7 and 12, and all of lot 6, of Section 17, from Dr. Andrew W. Smythe, on the 1st of May, 1907. Dr. Smythe acquired it from the State of Louisiana, under patent dated the 3rd of June, 1874. The land was granted to the State by virtue of the Swamp Land Grant of March 2, 1849 (9 U. S. Statutes at Large, p. 352), and was selected, surveyed and approved to the State as swamp or overflowed land to which the State was entitled, as per list of approvals dated May 5, 1874.

"The defendants bought from Dr. Charles A. Gaudet, on the 16th of February, 1893, a tract of land described as fronting on Bayou St. John and extending back in a westerly direction to Milne Street, and therefore embracing the land in controversy. Dr. Gaudet acquired the same tract, bounded on the east by Bayou St. John and on the west by Milne Street, at a receiver's sale, made under a decree of the U. S. Circuit Court for the Fifth Circuit and Eastern District of Louisiana, on the 27th of February, 1892, in the suit of James W. Peake v. City of New Orleans.

"The land had been transferred by the City of New Orleans to the receiver under orders of the Federal Court in the receivership proceeding of Peake v. City of New Orleans, on the 11th of February, 1892. It had been transferred by or from the three boards of drainage commissioners for the drainage districts of Orleans and Jefferson (established by the Act No. 165 of 1858, p. 114, and Act No. 191 of 1859, p. 152), and was held in trust by the Board of Administrators of New Orleans, by the Act No. 30 of 1871, entitled an Act to provide for the drainage of New Orleans. It was acquired by the Board of Commissioners of the First Drainage District on the 21st of July, 1863, by virtue of public sales made by the sheriff in execution of judgments for taxes due to the drainage district, assessed, respectively, against the heirs of Charles D. Moran and the Milne Orphan Asylums. The four Milne asylums afterwards approved and ratified the sale of their property.

"Thus far, the defendants, tracing their chain of title backward in time, have shown a title upon its face translative of the property in contest. But the plaintiff has shown an unbroken chain of title from the Government of the United States. And, in order to defeat that title (eliminating questions of prescription), it devolved upon the defendants to show a title, antedating that of the plaintiff, from one of the plaintiff's authors or vendors, or from the French or Spanish government. The defendants do not claim title from the plaintiff's immediate vendor, Dr. Smythe, who acquired title from the State in 1874. They claim title from the State by virtue of the Acts No. 165 of 1858 and No. 30 of 1871, and by virtue of a plea of *estoppel*, which will be referred to hereafter.

* * * * *

See Judgment, Tr., p. 60, No. 88.

"Defendants contend further that the State's acquisition of lot 7 of Section 8 and lots 1, 6, 7 and 12 of Section 17, in Township 12 South, Range 11 East, under the Swamp Land Act of March 2, 1849, inured to the Boards of Drainage Commissioners of the drainage districts of Orleans and Jefferson, under and by virtue of the Act 165 of 1858, and inured to the Board of Administrators of New Orleans under Act 30 of 1871. The Act No. 165 of 1858 did not purport to transfer any land of the State to the levee and drainage district created by that statute, **nor did it authorize the board of commissioners of the district to levy taxes upon any public land.** Nor did the Act No. 30 of 1871 purport to transfer any

land of the State to the Board of Administrators of New Orleans. When the land was assessed for taxes, and seized and sold to the Board of Commissioners of the drainage district, it was a part of the public land of the United States, subject to approval to the State as swamp or overflowed land; and it was therefore not subject to taxation. That question was also fully considered in the case of the Board of Directors of Public Schools v. New Orleans Land Co., *supra* (138 La. An. 32); and it would be useless to repeat here the reasons assigned for the opinion in that case, that the State was not estopped by any act of the Legislature to claim and dispose of the land after it was approved to the State as swamp or overflowed land."

(See judgment, Tr., p. 62 and 63.)

The New Orleans Land Co., the defendant in the said suit of *Leader Realty Co. v. New Orleans Land Co.*, decided by the Supreme Court of Louisiana, instituted the present action to enjoin the Leader Realty Co., Ltd., the Clerk and Sheriff of the Civil District Court from carrying the judgment rendered in said suits, No. 91,799 and 91,800, into execution, and attempting to dispossess the New Orleans Land Co. from the land purchased by Dr. S. A. Gaudet from the receiver. (See prayer of petition, Tr., p. 4.).

The Court issued an order to defendant to show cause why a preliminary injunction should not issue (Tr., p. 5). On May 8th, 1919, Hon. Rufus E. Foster, Judge of the

United States District Court, Eastern District of Louisiana, New Orleans Division, handed down a written opinion denying the injunction. (See Tr., p. 72.)

A new trial was then asked for and refused and the suit dismissed for want of jurisdiction. (Tr., pp. 74, 75, 76 and 77.) From this judgment complainant appealed to this Court (Tr., p. 80) and the District Judge has also certified the question of jurisdiction to this Honorable Court. (Tr., 79.)

ARGUMENT.

The Supreme Court of the State of Louisiana fully considered the link in defendants' title, by which Gaudet acquired the land in the receivership proceedings in the matter styled *James W. Peake v. City of New Orleans, No. 12,008 of the United States Circuit Court, for the Eastern District of Louisiana*, and while giving full force and effect to the validity of those proceedings, held that Gaudet and his transferees acquired only such title as the defendant, the City of New Orleans, possessed, and that the Leader Realty Co., whose authors in title had acquired from the State of Louisiana by patent, had the better title to the land. The New Orleans Land Co. prosecuted a writ of error from the decision of the Honorable the Supreme Court of Louisiana to this Honorable Court. An application was made by the Leader Realty Co. to dismiss or affirm and the writ of error was dismissed for want of jurisdiction. An applica-

tion was made for a rehearing, which was refused. *(248 U. S. 250.)*

THE COURT IS WITHOUT JURISDICTION.

1. The bill filed herein shows on its face that the present controversy is one between citizens of the same state, and, therefore, the Court is without jurisdiction due to diversity of citizenship.

2. The suit does not arise under the Constitution or laws of the United States or treaties made under their authority.

The Court is, therefore, clearly without jurisdiction. An attempt has been made, however, to confer jurisdiction on the Court for the reason that the bill filed herein is ancillary to the proceedings entitled *James Wallace Peake v. City of New Orleans, No. 12,908 of the United States Circuit Court for the Eastern District of Louisiana.* This is not an ancillary proceeding, as it does not seek to make any decree rendered in that case effective and no attack is being made on any order rendered therein.

A reference to the allegations of the bill will show that complainant alleges that a sale was made in the *Peake case*, which was confirmed, and complainant's authors in title placed in possession of the property. No attack is being made on the validity of this sale, nor is the proceedings in or the jurisdiction of the United States Circuit Court in

that matter assailed in any manner. The Supreme Court of Louisiana recognized the proceedings in the *Peake case* as well as the validity of the sale, but held that the Leader Realty Company's title, which had been acquired from another source, the State of Louisiana, was superior to the title of the New Orleans Land Co., which was that of the City of New Orleans, the defendant in the *Peake case*. The *Peake case*, therefore, has no connection with the present controversy. A reference to the prayer of the present bill (Tr., p. 4) will show that complainant is not seeking the aid of the Court to carry out any decree or order which was rendered in the *Peake case*, but to reverse the decision of the Supreme Court of Louisiana, which holds that the title of the Leader Realty Company, Ltd., derived from a source different from that of the City of New Orleans, defendant in the *Peake case*, is superior to that of the purchaser in the *Peake case*. The strangest part of the proceeding is the fact that complainant asks the United States District Court to reverse the judgment of the Supreme Court of Louisiana by putting a different construction upon the statutes of the State of Louisiana than has been placed thereon by the Supreme Court of the State of Louisiana. It is elementary that the decisions of the State Court relating to matters of local law, such as the construction of the State Constitution and statutes, will be regarded by the Federal Court as controlling when their application involves no infraction of any right granted or secured by the Constitution or laws of the United States. *Old Colony Trust Co. v. City of Omaha, 230 U. S. 101, Syl. 5; Railway & Light Com-*

pany v. Railroad Commission of Wisconsin, 238 U. S. 174, Syl. No. 4.

In *Hunter v. City of Pittsburg, 207 U. S 161,* it was held:

> "The policy, wisdom, justice and fairness of a state statute, and its conformity to the state's constitution are wholly for the Legislature and the Courts of the state to determine, and with those matters this Court has nothing to do."

In *Andrews v. National Foundry & Pipe Works, 76 Fed. 166,* the Seventh Circuit Court of Appeals, composed of Judges Woods, Showalter and Seaman, Mr. Justice Woods being the organ of the Court, it was held:

> "The first direct ruling of the Supreme Court of the State upon a particular question involving the construction of a State statute will be followed by the Federal Court."

In the present case complainant not only asks the United States District Court not to heed the construction placed by the Supreme Court of Louisiana on several statutes of the State of Louisiana, but to place a different construction thereon. The mere statement of the proposition shows how utterly absurd and devoid of merit the present bill is.

In *Burgess v. Seligman, 107 U. S., 20-33,* the Court said:

> "The existence of two co-ordinate jurisdictions in the same territory is peculiar, and the results would

be anomalous and inconvenient but for the exercise of mutual respect and deference. Since the ordinary administration of the law is carried on by the State Courts, it necessarily happens that by the Court of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is. * * * For the sake of harmony * * * the Federal Courts will lean towards an agreement of views with the State Courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the Courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid * * * any unseemly conflict with the well-considered decisions of the State Court."

In *239 U. S. 614*, it was held:

> "The proper construction of the Constitution and laws of a State is not for the Federal Supreme Court to determine on a writ of error to a State Court."

In *Price v. The People of the State of Illinois, 238 U. S. 446*, it was held:

> "This Court accepts the decision of the highest Court of the State, as to the construction of a pure

> food statute, and whether specified articles are included within the prohibitions thereof, and then determines whether, as so constructed, the statute is valid under the Federal Constitution."

In *Cusack v. The City of Chicago, 242 U. S. 526,* it was held:

> "A city ordinance, which has been upheld by the highest Court of the State as valid under State legislation, is to be regarded by this Court as a law of the State and to be tested accordingly."

Stripped of all extraneous matter, the position of complainant resolves itself to this: Where real estate is acquired at a sale made under orders of a Federal Court this Court has jurisdiction by ancillary proceedings to maintain the purchasers in possession of the property against all claimants, not parties to the original suit, regardless of the nature of their title thereto, and notwithstanding their claim under a title derived from a source entirely different from the defendant in the original suit. The mere statement of the proposition carries with it its refutation.

From any viewpoint, therefore, the United States District Court is without jurisdiction.

The United States District Court is inhibited from granting the injunction under Federad Code by Paragraph 1030 to stay proceedings in State Courts, except in certain cases therein mentioned.

In *American Assn., Ltd., v. Hurst, 59 Fed. 1 (the Sixth Circuit Court of Appeals, composed of Judges Taft, Luston and Levens)*, the facts were a bill was filed in the United States Circuit Court for the Eastern District of Kentucky praying that one named Colson be enjoined from selling property under an execution, and that another person by the name of Hurst be enjoined from directing said sale. Mr. Justice Taft, as organ of the Court, on page 5, after referring to the cases of *Freeman v. Howe, 34 How. 450; Buck v. Colbath, 3 Wallace 334*, and *Covel v. Heyman, 111 U. S. 176*, said:

> "The principle of the decisions in Freeman v. Howe, Buck v. Colbath, and Covel v. Heyman has a much broader application than counsel for appellant concede. The principle is that, in order to preserve the dignity and protect the effectiveness of the process of Courts of concurrent jurisdiction, and to avoid unseemly conflicts between them, and between their respective executive officers, no remedy of an injunctive or dispossessory character will be afforded by one Court against the acts of the executive officers of the other Court, when done under color of an order or process issuing from such other Court, because it would have the inconvenient and anomalous effect to stay the proceedings in one Court to allow another Court to investigate the validity of acts done under such proceedings. A replevin of personal property in the hands of its officer, or an injunction against a levy upon personal property by such officer will certainly not more offend the dignity of the Court, or more interfere with the due

> discharge of business before it, than will an injunction against a levy on real estate by its officer under color of its process. Moreover, the acts which it was here sought to enjoin were not mere levies upon real estate, but were the sale of it, and the execution of a deed to the purchaser, with a possible writ of possession, or, at least, with title upon which to found ejectment; so that, even if the principle of Freeman v. Howe, and other like cases, only applies when there is to be a conflict of possession between one Court and another, we think the remedy here sought would come within their inhibition."

The exact question we are here considering was involved in the case of *Watson v. Jones, 13 Wallace 679,* and the Court held:

> "Hence, an unexecuted order of this kind, made by a State Court to restore possession to the parties who had been deprived of it by a decree which had been reversed, cannot be interfered with by another Court by way of injunction, especially by a Court of the United States, by reason of the Act of Congress of March 2, 1793."

See Syllabus No. 3.

In this case, the Chancery Court of Kentucky had ordered certain property restored to the possession of certain parties. The United States Circuit Court was applied to for an injunction to prevent the said parties from taking possession. In the present case, the Supreme Court of Louisiana has affirmed the judgment of the lower Court,

decreeing the Leader Realty Company, Ltd., to be the owner of the land in question and putting it in possession of the property. As held by this Honorable Court, in *13 Wallace 678*, this unexecuted order of the State Court to deliver possession to the Leader Realty Company, Ltd., cannot be interfered with by another Court by way of injunction, especially by a Court of the United States. As an injunction is asked for in the present case to prevent the carrying out of the orders of the Supreme Court of the State of Louisiana, it is respectfully submitted that this is within the inhibition of the Judicial Code, paragraph 1030, and the District Court of the United States is without jurisdiction.

In *Whitney v. Wilder, 54 Fed. 554*, the Fifth U. S. Circuit Court of Appeals for the Fifth Circuit held:

> "The prohibition of injunctions against the State Courts extends to all cases over which such Courts first get jurisdiction, and applies to the officers and parties in the Courts, as well as to the Courts themselves. Therefore, a Federal Court has no power, on the complaint of a legatee and an executor under a will probated in one State to enjoin an administrator appointed in another State from distributing the funds under his control to the heirs at law."

Mr. Justice Toulmin, as organ of the Court, said:

> "It was said by this Court, in the case of Railway Co. v. Kuteman, 54 Fed. Rep. 547, that 'there is not in our system anything so unseemly as rivalry and

contention between the Courts of the State and the Courts of the United States.' The framers of our statute laws, foreseeing the evils of such conflicting jurisdiction, have wisely prohibited, in express terms, the granting of injunctions to stay proceedings in any Court of a State. Rev. St., Par. 720; Railway Co. v. Kuteman, supra. This prohibition of the statute extends to all cases over which the State Court first obtains jurisdiction, and applies not only to injunctions aimed at the State Court itself, but also to injunctions issued to parties before the Court, its officers or litigants therein. Diggs v. Wolcott, 4 Cranch 179; Peck v. Jenness, 7 How. 625; Dial v. Reynolds, 96 U. S. 340.

"As, in our opinion, the Circuit Court was without power to grant the injunction, and the decree must, for that reason, be reversed. * * *"

Mr. Foster, in his work on *Federal Practice, 5th Edition, Par. 270*, says:

"The Judicial Code, re-enacting a section of the Revised Statutes (Par. 720), provides that 'the writ of injunction shall not be granted by any Court of the United States to stay proceedings in any Court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.' (Judicial Code, Par. 265.) This prohibition of the statute extends to all cases over which the State Court first obtains jurisdiction, and applies not only to injunctions aimed at the State Court itself, **but also to injunctions aimed at the parties before the Court, its officers or litigants**

> **therein.** (Citing Whitney v. Wilder, 5th U. S. Circuit Court of Appeals, 54 Fed., 554, 555, and Chicago Trust & Savings Bank v. Bentz, 59 Fed. 647.) Accordingly a Federal Court has refused to enjoin a railway company from taking possession of land upon the termination of condemnation proceedings in a State Court, to which the applicant for injunction was a party (Dillon v. Kansas City Ry. Co., 43 Fed. 109); the plaintiff in a foreclosure suit from selling property under a decree of the State Court therein, although the Federal complainant is not a party to such suit, and claims a lien upon such property, which is in the hands of a receiver appointed by such Court (Security Trust Co. v. Union Trust Co., 134 Fed. 381); and a town from selling property to pay an assessment the collection of which had been ordered by a State Court directing the laying out of a highway."

In *Maloney v. Mass. Loan Association, 53 Fed. 209*, was held:

> "Where a bill prays for an injunction or stay of proceedings in a State Court, and also other relief which would be useless without such an injunction, the whole bill would be dismissed on demurrer."

We are aware that the doctrine pertains in the Federal Court that the provision contained in the Judicial Code, Par. 1030, forbidding the Federal Courts to enjoin the prosecution of suits in State Courts, does not apply to proceedings incidental to jurisdiction properly acquired by a Federal Court for other purposes than that of enjoining proceedings in a State Court. For illustration, where a com-

plainant, after obtaining a decree in her favor, was proceeding before the master for an accounting of rents and profits, an injunction will lie to enjoin subsequent action brought by her in a State Court to recover the same rents and profits. This is to prevent conflicts and a multiplicity of suits. But what we desire to impress upon your Honors is that the present suit is not brought as an incident to the jurisdiction acquired by the United States Circuit Court of Appeals in the *Peake case*, but is brought solely to enjoin the carrying out of a decision of the Supreme Court of Louisiana, which decrees that the Leader Realty Company, Ltd., whose title was derived from a source different from the City of New Orleans, defendant in the *Peake case*. The purchaser in the *Peake case* only acquired such title as the defendant, the City of New Orleans, possessed. The title of the Leader Realty Co., derived from a different source than the City of New Orleans, being the better title, as held by the Supreme Court of Louisiana, surely the Land Company has no cause for complaint, nor has the District Court of the United States jurisdiction by way of injunction to prevent the judgment of the Supreme Court of Louisiana being executed and the rightful owner of the property placed in possession thereof. In the present case, if it is held the United States District Court has jurisdiction, it will, in effect, stop the carrying out of the order of the Supreme Court of the State of Louisiana, and this you have said, in *13 Wallace*, the Federal Courts were inhibited from doing under Paragraph 720 of the Revised Statutes, now Paragraph 1030 of the Judicial Code of the United States.

The parties and the subject matter of the present bill are identically the same as the subject matter and the parties in the suit of Leader Realty Company v. New Orleans Land Company and Lakeview Land Company, Nos. 91,799 and 91,-800 of the Civil District Court, Parish of Orleans. The issues in the suit having been finally determined by the Supreme Court of Louisiana adversely to the New Orleans Land Company, the United States District Court is without jurisdiction to review the judgment of the Supreme Court of Louisiana.

In *Forsyth v. Hammond, 166 U. S. 506*, it was held:

> "The plaintiff in error having voluntarily commenced an action in the Supreme Court of the State to establish her rights against the City of Hammond, and the questions at issue being judicial in nature and within the undoubted cognizance of the State Court, she cannot, after a decision by that Court, be heard in any other tribunal to collaterally deny its validity."

Therefore, we say, in the present case, that the New Orleans Land Company, complainant in the present bill, having filed its answer without any protest or objection in the State Court, setting up all the defenses which it is now urging in the present bill as to the validity of its title, and the Supreme Court having held that the Leader Realty Company's title to the land is the better title, it cannot now, after a decision by the Supreme Court of the State on all questions

involved, have that decision reviewed by the United States District Court.

In *Cooper v. Newell, 173 U. S. 555*, it was held that the Courts of the United States are bound to give the judgments of the State Court the same faith and credit that the Courts of one State are bound to give the judgments of the Courts of a sister State.

In *Scotland v. Hill, 132 U. S. 107; Forsyth v. Hammond, 166 U. S. 506, and Colon v. Webster Mfg. Co., 84 Fed. 593*, it was held that the judgment in a State Court having jurisdiction will operate as a bar to a second suit for the same cause of action between the same parties in a Federal Court.

In *Chicago v. Wiggins Brewing Co., 108 U. S. 22*, the Court said:

> "So long as the judgment (of a State Court) stands it cannot be impeached collaterally in the Courts of the United States any more than those of the State, by showing that if due effect had been given to the laws it would have been the other way."
>
> • • • • • •

The Courts of the United States must give it the same effect.

The able attorneys for the Land Company in the District Court referred to *Julian v. Central Trust Company, 193 U.S. 94*, as justifying their applying to the District Court

for an injunction to arrest the orders of the Supreme Court of Louisiana. A reference to that decision and similar decisions will show the Circuit Court of the United States ordered a sale of a railroad, free of all privileges, mortgages or other encumbrances resting thereon, as it had the undoubted right and jurisdiction to do. The purchaser at the sale, therefore, acquired free of all claim against the defendant. Subsequent to the sale, a creditor of the defendant went into the State Court to assert a claim against the property sold, and it was held that the Circuit Court, having ordered the property sold free of all claims, and the purchaser having so acquired, that the Circuit Court of the United States, **in order to make its decree effectual,** had the right, notwithstanding Sec. 720 Rev. Stat., to restrain all proceedings in the State Court. The purchaser in the *Peake case* acquired whatever title the defendant, the City of New Orleans, and her authors in title possessed. If the City of New Orleans or her authors in title, or anyone holding under them, attempted in the State Court to interfere with the possession obtained by the purchaser in the *Peake case*, then the District Court of the United States, in order to make its decree effectual, could enjoin the proceedings. But in the present case neither the City of New Orleans nor its authors in title, or anynoe holding under them, are interfering with the possession of the purchaser in the *Peake case*. The Leader Realty Company, the holder of title derived from a source entirely different from the City of New Orleans, namely, from the State of Louisiana, brought an action against the New Orleans Land Company,

which was in possession of the land owned by it, to be decreed to be the owner thereof. The Land Company defended, asserting title it had acquired from the City of New Orleans in the Peake suit. The Supreme Court of Louisiana held the title of the Leader Realty Company to be the better of the two. The District Court is now asked to overrule the judgment of the Supreme Court of Louisiana and to maintain the validity of the title which the purchaser obtained from the Receiver in the *Peake case*. This, we respectfully submit, the District Court has no jurisdiction to do.

In *High on Receivers, 4th Ed., Sec. 199, p. 232*, is the following:

> "Nor is the title of a third person, not a party to the cause in which the receiver is appointed and the sale made, divested or affected by such sale."

The purchaser in the *Peake case* could only acquire whatever title the defendant, the City of New Orleans, possessed, and could not affect the title held by a third person, acquired from a different source. The Supreme Court of Louisiana having held that the title of the Leader Realty Company, Ltd., obtained from a source different from the City of New Orleans, was superior to the one acquired by the defendant in the receivership sale, the District Court has no jurisdiction to arrest the judgment of the Supreme Court of Louisiana by injunction, nor has that Court jurisdiction to review the judgment of the Supreme Court of

Louisiana to determine whether or not it was correct in holding the title of the Leader Realty Company to be superior to that of the New Orleans Land Company.

The question as to whether the Leader Realty Company, Ltd., or the New Orleans Land Company has the better title to a piece of real estate having been determined by the Supreme Court of Louisiana, after a full hearing of all parties, the judgment of the Supreme Court of Louisiana is final and the United States District Court for the Eastern District of Louisiana has no jurisdiction to review it. The proper remedy to review final judgment of the Supreme Court of Louisiana is by a writ of error or *certiorari* to this Honorable Court. The New Orleans Land Co. only applied to the District Court for relief after your Honors had dismissed his writ of error for want of jurisdiction (See *248 U. S. 550*).

We respectfully ask that the judgment of the lower Court be affirmed.

Respectfully submitted,

JOHNSTON ARMSTRONG,
WILLIAM WINANS WALL,
GUSTAVE LEMLE,
Attorneys for the Leader Realty Co.,
Defendant and Appellee.